

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER
AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER**

**ITA No.2977/M/2024
Assessment Year: 2014-15**

M/s. Aar Fin Brokers Private Limited, 103, Kedia Chambers (Resi Wing), SV Road, Malad West, Mumbai Maharashtra – 400 064 PAN: AAACA9794Q (Appellant)	Vs.	Income Tax Officer-12(1)(1), Room No.226, 2 nd Floor, Aayakar Bhavan, Maharishi Karve Road, Mumbai Maharashtra 400020 (Respondent)
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Present for:

Assessee by : Shri Ravikant Pathak, C.A.
Revenue by : Shri Manoj Kumar Sinha, Sr. DR.

Date of Hearing : 25 . 07 . 2024
Date of Pronouncement : 31 . 07 . 2024

O R D E R

Per : Narender Kumar Choudhry, Judicial Member:

This appeal has been preferred by the Assessee against the order dated 08.11.2021, impugned herein, passed by the National Faceless Appeal Center (NFAC)/ Ld. Commissioner of Income Tax (Appeals) (in short Ld. Commissioner) under section 250 of the Income Tax Act, 1961 (in short 'the Act') for the A.Y. 2014-15.

2. At the outset, we observe that there is a delay of 2 years 4 months and 19 days in filing of the instant appeal. The Assessee by filing a petition dated 28.05.2024 for condonation of delay along with affidavit dated 16.05.2024 has submitted that the Ld. Commissioner decided the appeal filed by the Assessee vide order dated 08.11.2021

by citing a reason that the Assessee had opted for Vivad Se Vishwas Scheme (in short "VSVS") without appreciating that the Assessee has never opted VSVS for the subjected assessment year but in fact it has opted for the A.Y. 2011-12, therefore, in order to get rectified the order passed by the Ld. Commissioner the Assessee approached the higher authorities of the Department but could not get succeeded. Later on the subsequent tax consultant M/s. AT Jain & Co. guided the Assessee to file an appeal before the Hon'ble ITAT against the impugned order in addition to making a request to the Hon'ble PCCIT to communicate to the NFAC to restore the appeal. And therefore the Assessee immediately filed the instant appeal on 27.05.2024 but with a delay of 2 years 4 months and 19 days. The delay occurred in filing the instant appeal is neither intentional nor malafide but based on the bonafide belief in pursuing the wrong remedy instead of challenging the impugned order before the appropriate forum i.e. ITAT. Hence, for substantial justice the delay in filing the instant appeal may kindly be condoned.

3. The Ld. D.R. though contested the claim of the Assessee, however, did not refute the factual aspects. Considering the reasoning for delay occurred as sufficient cause, we, for the substantial justice and for just decision, are inclined to condone the delay. Accordingly, the delay of 2 years 4 months and 19 days is condoned in filing the instant appeal.

4. Now coming to the merits of the case, we observe that the Assessee has demonstrated by filing form No.1 and form NO.5 that it had opted for VSVS for the case pertaining to A.Y. 2011-12 but not for the year under consideration i.e. A.Y. 2014-15. Somehow, may be overlooking or inadvertently or mistakenly the Ld. Commissioner by recording the reason that the Assessee has opted for VSVS, dismissed the appeal of the assessee being infructuous.

- 5.** The Ld. D.R. did not refute the aforesaid facts.
- 6.** Hence, considering the peculiar facts and circumstances of the case as the Assessee never opted for VSVS for the year under consideration, we are inclined to set aside the impugned order and consequently remanding the instant case to the file of the Ld. Commissioner for decision afresh on merits.
- 7.** In the result, the appeal filed by the assessee stands allowed for statistical purposes.

Order pronounced in the open court on 31.07.2024.

**Sd/-
(GAGAN GOYAL)
ACCOUNTANT MEMBER**

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.